

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**WRIT PETITION NO.7267 OF 2004.**

Arun Manjunath Naik. .... Petitioner.

versu.

Sandhya Arun Naik. .... Respondent.

Shri D.J.Lulia for the Petitioner.

Shri S.M.Shettigar for the Respondent.

**CORAM : ABHAY S.OKA, J.**

**DATED : 9th December, 2004.**

**P.C.:**

1. Heard learned Counsel appearing for the parties. The Petitioner is the husband and Respondent is the wife. The challenge in this petition is to the order of interim maintenace in favour of the Respondent/wife granted by the Family Court in a petition filed by the Petitioner for divorce. By order dated 21st January 2004, the learned Judge of the Family Court fixed the interim maintenance at the rate of Rs.3500/- which was made payable from 4th April 2003. The learned Judge of the Family Court directed the Petitioner to pay a sum of Rs.3000/- by way of expenses to the Respondent. An Application for review was made by the Petitioner which came to be rejected.

2. The learned Counsel for the Petitioner submitted that the Respondent is staying in the house of the Petitioner along with their son who is earning handsome income. He submitted that though gross salary of the Petitioner is Rs.14,402/- his take home salary is only about Rs.5500/-. He has invited my attention to the salary slips which are annexed to the petition. A perusal of the salary slip of the year 2004 shows that the net amount payable to the Petitioner is Rs.11,171/-. The salary slip shows that there is a further deduction of Rs.5544/- on account of repayment of the loan taken by the Petitioner. There is no explanation forthcoming as to when and for what purpose the loan was taken. This becomes relevant in the face of the case made out by the Respondent/wife that the loan was taken with a view to defeat the claim of maintenance of the Respondent. Considering the income of the Petitioner, it cannot be said that the interim maintenance of Rs.3500/- fixed by the Family Court is unreasonable. While fixing the quantum of interim maintenance the fact that the son of the Respondent is earning income and he is in a position to support the Respondent cannot be considered as the Petitioner/husband has to maintain the Respondent/wife.

3. No case is made out for interference under Article 227 of the Constitution of India. Petition is rejected. However, the Petitioner is granted time of 8 weeks to comply with the impugned order. The Family Court is

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directed to dispose of the main M.J.Petition as expeditiously as possible.

4. Parties and the concerned Court to act on the authenticated copy of this order.

**Judge.**